

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Honolulu, Hawaii)

ALLIED MAINTENANCE SERVICES , INC.

Employer

and

HAWAII CARPENTERS UNION, LOCAL 745, UNITED  
BROTHERHOOD OF CARPENTERS & JOINERS OF  
AMERICA, AFL-CIO

Petitioner

**37-RC-3893****DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 1/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 2/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 3/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time maintenance employees , custodial employees, landscape employees, and parking attendant employees employed by the Employer on the Island of Oahu, Hawaii; excluding all casual and on-call employees, office clerical employees, confidential employees, 5/ guards and supervisors 6/ as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

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period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Hawaii Carpenters Union, Local 745, United Brotherhood of Carpenters & Joiners of America, AFL-CIO.**

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii, on or before **June 28, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **July 6, 1999**.

Dated June 21, 1999

at San Francisco, California

/s/ Joseph P. Norelli  
Acting Regional Director, Region 20

- 1/ The parties stipulated, and I find, that the Employer is a Hawaii corporation with a place of business located on the Island of Maui, Hawaii, where it is engaged in providing building maintenance, janitorial, landscaping and related services. During the calendar year ending December 31, 1998, a representative period, the Employer performed services for entities directly engaged in interstate commerce valued in excess of \$500,000, and purchased and received at its Hawaii location, supplies and equipment valued in excess of \$100,000 that were shipped to it from outside the State of Hawaii. Based on the parties' stipulation to such facts, it is concluded that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.
- 2/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 3/ The parties stipulated, and I find, that there is no collective bargaining agreement covering any of the employees in the petitioned-for unit.
- 4/ At the hearing, the parties stipulated to the unit description contained in the petition except with regard to the issue of whether the working shift supervisors should be included or excluded from the unit as statutory supervisors. With the modifications to the unit made herein, I find that the petitioned-for unit is appropriate for collective bargaining purposes.
- 5/ The parties stipulated, and I find, that Fran Tomi, the secretary for the Employer's President Jim Tilley, is a confidential employee who should be excluded from the unit.
- 6/ The Petitioner seeks to represent a unit comprised of all full-time and regularly scheduled maintenance, custodial, landscape and parking attendant employees employed by the Employer on the Island of Oahu, Hawaii; excluding casual or on-call employees, clerical employees, confidential employees, guards and supervisors as defined in the Act.

As indicated above, the only issue presented herein is whether 9 working shift supervisors and the floating/relief working shift supervisor are statutory supervisors who should be excluded from the unit. The Petitioner contends that the 9 working shift supervisors are not statutory supervisors and should be included in the unit and that the floating/relief working shift supervisor is a statutory supervisor and should be excluded from the unit. The Employer asserts the contrary view.

Stipulations. The parties stipulated, and I find, that General Manager Patrick Mulholland; President Jim Tilley; and Area Supervisors Michael Ellis, Jr. and Derrick Caminos are supervisors within the meaning of the Act and should be excluded from the unit.

Background. The Employer provides maintenance, janitorial, landscaping and parking attendant services at 19 locations on the Island of Oahu. The Employer's President is James Tilley and its General Manager is Patrick Mulholland. Neither Mulholland nor Tilley provides regular oversight of the Employer's work sites or daily supervision over its

employees. Mulholland supervisors the Employer's two area supervisors, Michael Ellis and Derek Caminos, who oversee its 19 work sites and employees on a regular basis. The major responsibilities of the two area supervisors are to ensure that the needs of the Employer's customers are taken care of and that work is assigned in order to deal with customer concerns or complaints. Ellis testified that as area supervisor, his duties include overseeing the properties in his area; turning in and collecting employee time sheets; purchasing; sending out proposals on properties; and overseeing irrigation projects. The record reflects that both Ellis and Caminos have the authority to hire, fire, suspend and promote employees.

Area Supervisor Ellis oversees 8 Employer job sites that are located primarily in the airport area; beyond the Pearl City area of Honolulu; and at the downtown location of Pioneer Plaza. Approximately 25 to 30 employees and 2 working shift supervisors work at these locations. These eight job sites include the Stadium Marketplace, Costco Center, Pearl Kai Shopping Center, Westridge Shopping Center, Times Square Shopping Center, Temple Valley Shopping Center, Aiea Shopping Plaza and Pioneer Plaza (for landscape maintenance work). The record reflects that Ellis is salaried and has a company vehicle. He visits each site at least 4 times a week.

The two working shift supervisors overseen by Ellis whose supervisory status is at issue in this proceeding are Mitch Combis, who works at the Costco Center, and Jacob Rubio, who works at the Stadium Marketplace. According to Ellis, the reason these two locations have working shift supervisors while others do not is that they have overlapping shifts so that Combis and Rubio have the opportunity to communicate with all employees on all shifts.

Working Shift Supervisor Mitch Combis. At Costco Center, the working shift supervisor is Mitch Combis. There are 7 other employees working at the Costco Center. Combis works 40 hours a week and spends 30 to 34 of these hours performing janitorial, landscaping and maintenance work like the other employees who work with him. During the other 6 to 10 hours of work each week, Combis oversees the master time sheet and follows up on assigned projects to ensure that they are completed on time. He also performs other administrative-type duties.

Combis works from 6 a.m. to 2:30 p.m., Monday through Friday. On Monday and Thursday, no one works with Combis on his shift. On Tuesday, Wednesday and Friday, there is one other employee who works with him. Combis' shift overlaps with the other shift at Costco Center, which runs from 1:30 p.m. to 10:30 p.m. Combis gives instructions to employees on that shift and follows up to see that their projects are completed on time. The second shift is split between 2 employees, one of whom works on Wednesday, Thursday and Friday, and the other of whom works on Monday and Tuesday. All employees have set shifts. Variations in shift assignments occur due to special projects and performance problems. Adjustments in hours are made only after Combis confers with Ellis. Combis assigns work on a daily basis to other employees. Another employee, named Jason Rubio, who handles irrigation projects, also works at the Costco Center but is not overseen by Combis. The record reflects that Combis has been a working shift supervisor for about 6 months. Combis is hourly paid and

earns about \$9 an hour. The other employees who work at Costco Center are paid between \$5.50 and \$7.50 an hour. All employees have same medical insurance plan.

Ellis testified that Combis has the authority to issue written warnings to employees and has done so on at least one occasion about 8 months prior to the hearing in this case. This written warning was issued to an employee, Rolly Gamez, for tardiness. Combis issued this warning without previously discussing it with Area Supervisor Ellis. Combis keeps the master time sheet and ensures that employees' hours are accurate. Combis has the authority to permit employees to leave work early if they are sick. However, to replace an absent employee, Combis must notify Ellis who utilizes an on-call list to find replacement employees.

The record reflects that Combis is on-call on the weekends. Only one employee works on the weekends and Combis schedules that employee. About 2 to 3 months before the hearing, Combis recommended that employee Joshua Rubio be given a raise and it was granted by the Employer. According to Ellis, Combis was also involved in resolving a grievance of an employee who complained about his bonus hours being cut. It appears that in this instance, Combis substantiated the performance problems that the employee was having that resulted in the cut in hours.

Working Shift Supervisor Jacob Rubio. According to Ellis, working shift supervisor Jacob Rubio who works at the Stadium Marketplace job site, has the same level of authority as Combis. Rubio has been a working shift supervisor for about 6 months, is hourly paid, and earns the same rate of pay as Combis. The other employees working at the Stadium Marketplace location earn the same rate of pay as the employees at the Costco Center.

There are 4 to 5 employees at the Stadium Marketplace who perform landscaping, janitorial and building maintenance functions. Rubio works from 6 a.m. to 2 p.m. Between 2 and 4 employees work with Rubio on his shift. There is also a 2 p.m. to 10 p.m. shift which has 2 employees; and a 10 p.m. to 6 a.m. shift which has 2 employees. Rubio oversees the employees on the other two shifts because his shift overlaps with theirs. The record reflects that Rubio works 40 hours a week and spends 35 of his working hours performing landscaping and other manual work. He spends the other 5 hours picking up supplies.

With regard to the scheduling of employees, Ellis testified this is done as a result of a conference between Ellis and Rubio and that Rubio assigns the work to be performed by employees. In this regard, Rubio testified that certain employees are capable of doing all types of work while others can only perform maintenance and janitorial work.

The record reveals that Rubio has never issued any written warnings to any employees. However, Ellis testified that Rubio possesses authority to issue written warnings to employees and can give verbal warnings for safety violations. He can also give employees time off for emergencies and employees who are sick contact him or Ellis.

According to Ellis, Combis and Rubio have no independent authority to hire or fire employees. Suspensions are determined at conferences between Combis or Rubio and Ellis. Neither Combis nor Rubio temporarily assigns employees to other job locations. There are no written evaluations. Ellis gives verbal evaluations to employees. Ellis testified that he takes the advice and recommendation of Combis and Rubio, “strongly” in evaluating and determining raises for employees. According to Ellis, their recommendations “help me make my decision.”

The record reflects that Ellis has meetings on a daily and/or weekly basis with Combis and Rubio. Combis carries a radio and pager and Rubio carries a radio.

Of the locations overseen by Area Supervisor Ellis, the following locations have no working shift leaders and employees report directly to Ellis: Pearl Kai Shopping Center which has 3 employees; Westridge Shopping Center which has one employee; Times Square Shopping Center which has 2 employees; Temple Valley Shopping Center which has 2 employees; Aiea Shopping Plaza which has one employee; and Pioneer Plaza (landscaping) which has one employee.

Area Supervisor Derek Caminos. Stipulated Supervisor Caminos is the area supervisor for 11 locations where approximately 62 employees and 7 working shift supervisors are employed. These locations include Pioneer Plaza (for maintenance and janitorial work), Executive Center, Airport Center, Hawaii Convention Center, Eaton Square (for parking), King Kalakaua Plaza, Koko Marina Shopping Center, Convention Business Center, Cannery at Iwilei, Alii Place (quarterly window cleaning), and the Melim Building.

Working Shift Supervisor Placita Peracho. Placita Peracho is the working shift supervisor at Pioneer Plaza, where there are 13 employees. Pioneer Plaza is a high-rise located in the financial district of Honolulu. Two employees work at this location from 9 a.m. to 5 p.m. and 11 employees work from 5 p.m. to 9 p.m. All 13 employees have set shift assignments. Peracho works Monday through Friday, from 4 p.m. to 9 p.m.

The record reflects that Peracho assigns tasks to these employees. All employees who work on the same shift have the same general duties. Peracho works a total of 24 hours per week and approximately 20 of these hours are spent doing maintenance and janitorial work. The other 4 or 5 hours are spent preparing the carts that employees use to clean offices by filling them with supplies.

Caminos testified that Peracho has written up one employee for coming to work late. According to Caminos, the Employer has a policy set forth in its manual whereby an employee receives one verbal documented warning for tardiness and 3 written warnings for tardiness prior to being terminated. However, Caminos testified that working shift supervisors use their own discretion in deciding whether to accept excuses for tardiness given by employees. The record does not contain a copy of the write up given by Peracho.

Working Shift Supervisor Lawrence Akee. At the Executive Center, which is located 2 blocks from Pioneer Plaza, the Employer has 6 employees. Lawrence Akee is the working shift supervisor at this location. The Executive Center has 3 regular shifts. There are 3 employees on the 6 a.m. to 2 p.m. shift; one employee on the swing shift from 2 p.m. to 10 p.m.; and 2 employees on the 10 p.m. to 6 a.m. shift.

The record reflects that Akee works that 6 a.m. to 2 p.m. shift and has his own desk. He works 40 hours a week and spends 25 to 28 hours a week doing floor care work. According to Caminos, last year Akee fired an employee without consulting with Caminos. Caminos did not recall why Akee fired the employee or the name of the employee. Caminos did not attempt to override Akee's decision in this regard. The record contains no other evidence pertaining to this termination.

Working Shift Supervisor Marcelisa Maceaga. At the Airport Center, which is located about 2 miles from Pioneer Plaza, Marcelisa Maceaga is the working shift supervisor. There are 5 employees employed at the Airport Center. Maceaga works Monday through Friday, 4 p.m. to 8 p.m. Four employees work on this shift. One employee works on 7 p.m. to 4 p.m. shift.

Maceaga works about 24 hours a week and spends 20 of these hours doing regular maintenance work. She was promoted to the position of working shift supervisor about 2 months prior to the hearing in this case. She has never disciplined any employees but according to Caminos she possesses the authority to do so. Caminos testified that Maceaga possesses the same level of supervisory authority as all of the other supervisors. She earns about \$7 an hour. Caminos testified that he visits the Airport Center about 3 times a week for about 45 minutes on each visit.

Working Shift Supervisor Manuel Pajela. At the HCC (Hawaiian Convention Center), which is located about 2 miles from Pioneer Plaza, there are total of 4 regularly scheduled employees. Manuel Pajela is the working shift supervisor at this location. Two of the employees at this location work on the 7:30 a.m. to 3:30 p.m. shift as does Pajela, and 2 work on the 5 p.m. to 9 p.m. shift. The Employer also sometimes assigns between 20 to 30 additional workers to this location as necessary in order to handle convention functions.

The record reflects that Pajela is salaried and works a total of about 45 hours a week. He spends about 30 of these hours performing maintenance and janitorial work. He spends the other 15 hours doing walk-around inspections with the property management and doing the master time sheet and checking its accuracy against the HCC records to ensure that the Employer's billing hours match the hours that HCC has on its time sheet for the Employer's employees. Pajela also assigns tasks to employees and orders supplies.

The record reflects that Caminos visits HCC about twice a week for about 1 ½ hours on each visit. Caminos testified that in May 1999, Pajela fired an employee who refused to perform an assigned task. Caminos did not recall the name of the employee who was terminated. According to Caminos, the employee was an on-call employee who was called in to work on a special event. As a result of Pajela's action, this employee was removed from the on-call

list. Caminos further testified that a week prior to the hearing, Pajela also terminated a regularly scheduled employee named Patrick Harrison who failed to show up for work. Harrison had no prior disciplinary actions in his record. The record contains no documentation regarding these terminations.

Caminos testified that he has the authority to override termination decisions made by working shift supervisors but did not do so with regard to Pajela's decisions to terminate the employees on these 2 occasions. Nor did he overrule Akee's decision to terminate the employee described above. Caminos testified that incident forms for disciplinary problems are placed in the employee's personnel file.

Working Shift Supervisor Daniel Gross. There are 5 employees at the Employer's Eaton Square work site (3 full-time and 2 part-time) who man a booth 24 hours a day, 7 days a week as parking attendants. They work on 3 staggered 8 hour shifts that run from 7:30 a.m. to 3:30 p.m.; 3:30 p.m. to 11:30 p.m.; and 11:30 p.m. to 7:30 a.m.

Daniel Gross is the working shift supervisor at then Eaton Square job site. Gross works 37 to 40 hours a week. Five days a week, he works a shift as a parking lot attendant from 7:30 a.m. to 3:30 p.m. No other employees work during his shift. In addition to his 40 hours a week as a parking lot attendant, Gross also works approximately 10 additional hours a week doing bank deposits, filling out paperwork, and faxing information to the Employer's Maui office.

The record reflects that Caminos visits the Eaton Square location about twice a week for about ½ hour to drop off supplies and pick up paperwork. Caminos testified that on the day prior to the hearing, Gross had terminated a regular part-time employee named Cresencio Criste for not showing up for work. According to Caminos, this was Criste's first offense and Gross did not consult with Caminos before terminating Criste. Caminos did not override Gross' decision in this regard.

Caminos did not recall Gross ever issuing a written warning to an employee. According to Caminos, Gross gave a verbal warning to an employee named Junior for not wearing his company uniform. Gross reported this verbal warning to Caminos after giving it to the employee. Gross can also grant employees time off for illness and then notify Caminos. Gross is salaried. The other employees at Eaton Square earn an hourly pay of between \$5.50 and \$6.50 per hour.

Working Shift Supervisor Cliff Patton. At King Kalakaua Plaza, there are 4 employees working on 3 8-hour shifts to care for the outer perimeter area, restrooms and common areas at the site. Cliff Patton is the working shift supervisor at this location. Patton works from 8 a.m. to 4 p.m. There are no other employees working on Patton's shift.

Patton works a total of 39.5 hours and spends 35 of these hours performing maintenance duties. During the other 4.5 hours, he makes out requisition forms for ordering the necessary supplies; does the payroll; ensures the accuracy of the time sheets and transfers them onto a



master time sheet. He also inspects work performed to ensure that it is done properly and assigns work to employees. He assigns work by writing notes with the assignments on a board in the office.

Patton has issued only one verbal warning to an employee for not cleaning torches properly. He has never fired or suspended any employees; he has never sent an employee home for performing his or her work improperly. He evaluates employees by telling Caminos that an employee is not working out. Caminos then removes the employee and provides a new employee. Caminos testified that about one month prior to the hearing, Patton informed him that an employee named Efrem Koh was not working out because he was not following directions. Caminos removed Koh and replaced him with a new employee. Koh, who had been a regularly scheduled employee, was placed on the on-call list.

Maintenance Supervisor Pacifico Dato. At Koko Marina, which is located about 10 to 12 miles from the Pioneer Plaza Shopping Center, there are 5 employees, including 3 janitors. They all have set shifts of 7 ½ hours that are set by the customer. Pacifico Dato is the maintenance supervisor at this location. Dato works Monday through Friday, from 8 a.m. to 4:30 p.m. One other employee works on the same shift as Dato. The other 3 employees work from 6:30 a.m. to 2:30 p.m. and from 1:30 am to 9:30 p.m. There is also one employee who cleans offices from 5:30 p.m. to 9:30 p.m. She reports directly to Caminos.

The record reflects that Dato works 40 hours a week. He spends 30 hours performing maintenance work and 10 hours overseeing the janitors and dealing with the property managers. He oversees the 3 janitors and one maintenance employee and deals with the property manager at Koko Marina. He assigns tasks to employees. Caminos handles the assignment of work times because he has access to the on-call pool.

Caminos testified that Dato has the authority to fire and without obtaining any prior approval from Caminos. Caminos testified that Dato recently asked Caminos to remove an employee named Marcelito who was not following orders and Caminos placed the employee on the on-call list.

It appears from the record that there are no working shift supervisors at the other 3 locations overseen by Caminos, Cannery at Iwilei, Alii Place and the Melim Building. The Alii Place has 2 window washers and a helper who work about one week each quarter. These persons also work at other locations doing window jobs. There are 5 employees working at the Melim Building, including one maintenance employee, one porter and 3 night-time office cleaning employees. The record does not disclose any details about the operation at the Cannery at Iwilei. It appears that Caminos directly supervises these employees.

Relief Working Nighttime Shift Supervisor/Relief Employee Danny Sadenio. The record shows that Danny Sadenio has been a relief working shift supervisor/ relief employee since about a month prior to the hearing in this case. He reports to Caminos. Sadenio works from about 4:30 p.m. until 2 a.m. five days a week. He also fills in if there are no call/no shows and oversees extra billings to ensure they are done properly. He spends about 15 of his 40

hours a week performing regular maintenance work. Sadenio has no authority to hire, fire or discipline employees or to send employees home. Instead he reports what he observes to Caminos who takes such actions. Likewise if an employee is ill, Sadenio reports this to Caminos who decides whether the employee can go home. Sadenio does not have the opportunity on a regular basis to observe employees and Caminos testified that he would not give Sadenio's recommendations as much weight as the recommendations of the other working shift supervisors. According to Caminos, Sadenio has recommended that floaters be made regular employees when they are working out well. Caminos gave as an example that in May 1999, Sadenio had recommended that floater James Bolosan be made a permanent employee and Caminos had given Bolosan a permanent position based on Sadenio's recommendation. The record reflects that Caminos schedules the floaters.

Sadenio's job includes checking sites where the Employer provides a 24-hour a day service to ensure that no employees are sleeping on the job. If he finds an employee sleeping on the job, he wakes them up and informs Caminos about it the next day and Caminos issues a written warning to the employee. Sadenio visits the Stadium Marketplace, and goes by the Costco Center and the Pearl Kai Shopping Center to ensure that the night shift personnel are not leaving before the end of their shifts.

Sadenio is salaried and earns about \$1500 per month.

Analysis. The term "supervisor" is defined in Section 2(11) of the Act as:

"[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

"To meet this definition, a person needs to possess only one of the specific criteria listed, or the authority to effectively recommend, so long as the performance of that function is not routine but requires the use of independent judgment." *Nymed, Inc., d/b/a Ten Broeck Commons*, 320 NLRB 806, 809 (1996). As observed by the Board in *Providence Hospital*, 320 NLRB 717, 725 (1996):

In enacting Section 2(11) of the Act, Congress distinguished between true supervisors who are vested with "genuine management prerogatives," and "straw bosses, lead men, and set-up men" who are protected by the Act even though they perform "minor supervisory duties." *NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 280-81 (1974).

Although the existence of any of the Section 2(11) powers, "regardless of the frequency of its exercise is sufficient," the "failure to exercise [supervisory powers] may show the authority does not exist." *Laborers Local 341 v. NLRB*, 564 F.2d 834, 847 (9th Cir. 1977). In this

regard, isolated and infrequent incidents of supervision do not elevate a rank-and-file employee to a supervisory level. NLRB v. Doctors' Hospital of Modesto, 489 F.2d 772, 776 (9th Cir. 1973). Similarly, an employee does not become a supervisor if his or her participation in personnel actions is limited to a reporting function and there is no showing that it amounts to an effective recommendation that will effect employees' job status. Ohio Masonic Home, 295 NLRB 390, 393 (1989).

In determining whether persons are statutory supervisors, "[j]ob titles are unimportant." Laborers Local 341 v. NLRB, *supra*; Arizona Public Service Co. v. NLRB, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971). Whether an individual is a supervisor is to be determined in light of the individual's actual authority, responsibility, and relationship to management. See Phillips v. Kennedy, 542 F.2d 52, 55 (8th Cir. 1976). Thus, the Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority." Oil Workers v. NLRB, 445 F.2d 237, 243 (D.C. Cir. 1971). It is well established that mere conclusory statements, without such supporting evidence, is not sufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Although a supervisor may have "potential powers . . . theoretical or paper power will not suffice. Tables of organization and job descriptions to do not vest powers." Oil Workers v. NLRB, *supra*, at 243. In addition, the evidence must show that the alleged supervisor knew of his or her authority to exercise such power. NLRB v. Tio Pepe, Inc., 629 F.2d 964, 969 (4th Cir. 1980).

Finally, in proving supervisory status, the burden of proof is on the party alleging such status. Tucson Gas & Electric Company, 241 NLRB 181 (1979).

The record herein discloses that Area Supervisor Ellis exercises much more control over the daily supervisory decisions involving employees at the 8 locations he oversees than does Caminos at the 11 locations he oversees. Thus Ellis visits each location at least 4 times each week which gives him the opportunity to observe employees first hand. It is Ellis who makes the decisions to hire, fire, suspend and promote employees and to give them pay raises. Combis and Rubio both spend most of their working time performing the same functions as the other employees at their respective locations. Thus, Combis spends 30 to 34 of his 40 hours each week performing regular work and Rubio spends 35 of his 40 hours each week performing regular work. The other hours that Combis spends working appear to be administrative in nature such as overseeing the master time sheet. Rubio appears to spend his additional 5 hours picking up supplies and performing other administrative tasks.

The type of work performed by employees at these two locations appears to be recurring and routine and thus the assignment of tasks among employees by Combis and Rubio does not appear to involve any independent exercise of judgement. Nor does allowing employees to leave who are sick or have emergencies establish the supervisory authority of these two individuals.

Nor do I find that isolated instances where Combis has issued a single write up for tardiness or recommended a raise for one employee that was granted sufficient to establish that

Combis has supervisory authority. It is further noted in this regard that no documentation was provided regarding these occurrences.

The fact that Combis and Rubio are paid an hourly wage that is a few dollars higher than that paid to their fellow workers does not warrant the conclusion that they are statutory supervisors as this difference appears consistent with their extra administrative duties. Accordingly, I find that working shift supervisors Combis and Rubio are not statutory supervisors and they will be included in the unit.

With regard to the working shift supervisors overseen by Caminos, I find that the record does not support a finding that Placita Peracho, Lawrence Akee, Marcelisa Maceaga, Cliff Patton, Pacifico Dato and Relief Working Shift Supervisor Danny Sadenio are statutory supervisors.

With regard to Peracho, the record shows that she spends 20 of her 24 working hours a week performing maintenance and janitorial work and the other 4 hours preparing the supply carts used by employees. Although Caminos testified that all working shift supervisors under his direction have the same level of authority, the record shows only that Peracho has issued one write up under an established Employer policy for tardiness. Her assignment of tasks to other employees appears to be routine for the same reasons as described above with respect to Combis and Rubio.

With regard to Lawrence Akee, the record shows that he spends 25 to 28 hours of his 40 hour work week doing floor care. The only evidence of his statutory supervisory authority is Caminos' assertion that Akee terminated an employee last year without consulting Caminos and Caminos let his decision stand. However, Caminos could not recall the name of the employee who was terminated or the reason therefor. Nor does the record contain any documentation regarding this termination. In the absence of facts and documentation regarding this incident, I decline to find that this unsupported assertion of a single isolated incident sufficient to establish that Akee is a supervisor within the meaning of the Act. As noted above, isolated and infrequent incidents of supervision do not elevate a rank-and-file employee to a supervisory level. NLRB v. Doctors' Hospital of Modesto, supra.

With regard to Maceaga, the record shows that she spends 20 of her 24 working hours performing maintenance work. There is no evidence that she has ever exercised any statutory supervisory authority. Although Caminos testified that Maceaga has the authority to discipline employees, she has not done so. While Maceaga has only been in the position for 2 months, I decline to find that she possesses such authority given that she spends most of her time performing the same work as other employees and in the absence of any direct evidence that she has been informed that she possesses such authority.

With regard to Patton, the record shows that Patton spends 35 of his 39.5 working hours each week performing regular maintenance duties and he works on a shift with no other employees. During the other 4.5 hours that he works, Patton performs administrative tasks such as ordering supplies, doing the payroll, and handling timesheets. For the same reasons described above, I do not find that Patton's assignment of tasks to employees establishes that

he has supervisory authority. Nor do I find that the issuance of a single verbal warning to an employee for not properly cleaning torches sufficient to establish his status as a statutory supervisory. Nor do I find that Patton's reporting to Caminos that an employee is not performing his work properly amounts to an exercise of supervisory authority. Rather, it appears to be more in the nature of a reporting of his observations to Caminos who then makes the decision to place the employee with a new employee. Accordingly, I do not find that Patton is a statutory supervisor based on the evidence in the record.

With regard to Pacifico Dato, the record shows that Dato spends 30 of his 40 hours a week performing regular maintenance work. He works on a shift with one other employee. He spends the other 10 hours ensuring that the janitors perform their jobs properly and dealing with the property managers at the Koko Marina site. Dato's assignment of routine tasks to the other employees at the site does not appear to involve his exercise of any independent judgment for the reasons cited above with regard to the other working shift supervisors. I do not find that Dato's recent request to Caminos that an employee who was not following orders be replaced is sufficient to support a finding that Dato is a statutory supervisor. Thus, it appears that Dato merely reports problems to Caminos and it is Caminos who decides what action to take; in this case to replace the employee and put the employee on the on-call list. Accordingly, I do not find that Dato is a statutory supervisor and he will be included in the unit.

With regard to Sadenio, the record does not support that he possesses or exercises any statutory supervisory authority. Rather, he reports his observations to Caminos who makes the personnel decisions with regard to such observations. Accordingly Sadenio will be included in the unit.

Manuel Pajela and Daniel Gross. The record supports a finding that working shift supervisors Manuel Pajela and Daniel Gross are statutory supervisors based on their authority to terminate other employees or to effectively recommend such actions. Based on Caminos' testimony that Manuel Pajela terminated a regular employee named Patrick Harrison who failed to show up for work the week prior to the hearing; and terminated an on-call employee who refused to perform an assigned task in May 1999, I find that Pajela is a statutory supervisor who is excluded from the unit. I also note that unlike the regular maintenance employees, Pajela is salaried.

With regard to Daniel Gross, based on Caminos' testimony that Daniel Gross terminated a regular part-time employee named Cresencio Criste for failing to show up for work on the day prior to the hearing and Criste had no prior offenses, I find that Gross is a statutory supervisor who is excluded from the unit. I also note that like Pajela, Gross is salaried.

Accordingly, I find that Mitch Combis, Jacob Rubio, Placita Peracho, Lawrence Akee, Marcelisa Maceaga, Cliff Patton, Pacifico Dato and Danny Sadenio are not supervisors and they will be included in the unit and that Manuel Pajela and Daniel Gross are statutory supervisors who are excluded from the unit.

Decision & Direction of Election  
Allied Maintenance Services, Inc.  
Case 37-RC-3893

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